Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1874

DAVID L. JONES, Secretary of the North Carolina Department of Corrections, RALPH EDWARDS, Commissioner of the North Carolina Department of Corrections,
Appellants

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

MOTION TO AFFIRM JUDGMENT

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Pursuant to Rule 16 (1)(c) of the rules of this Court, Appellee moves the Court to affirm the judgment of the United States District Court for the Eastern District of North Carolina on the grounds 1) that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument, and 2) the appeal is not sufficiently important to justify plenary treatment by this Court.

STATEMENT

On March 18, 1975 the North Carolina Prisoners' Labor Union, Inc. brought suit in the U.S. District Court for the Eastern District of North Carolina seeking to enjoin the Secretary of Corrections from interferrence with Prisoners' Union mail and other related matters. On March 26, 1975, the Secretary of Corrections issued a statewide General Policy which prohibited prisoners from soliciting others to join the Prisoners' Union and made it a major disciplinary offense to do so. On this basis, Honorable F.T. Dupree, Jr. presiding United States District Judge certified the action as requiring a Three-Judge Court. In May of 1975 Honorable Clement F. Haynsworth, Jr., Chief Judge of the Fourth Judicial Circuit designated the Three-Judge Court.

For a period of several months thereafter, the parties proceeded to accumulate a voluminous record composed of affidavits, depositions and other means of discovery. The Three-Judge Court heard the case on February 6, 1976 and issued a Memorandum Decision on March 16, 1976 (Jurisdictional Statement, Appendix A,p.20).

In this unanimous opinion, the Court declared that the questions decided were presented in the following factual context:

1. Inmates are permitted to join a union and have been and are being permitted to join the North Carolina Prisoners' Labor Union, Inc. Some 2,000 prisoners have already joined. There are no membership dues although dues are authorized by the by-laws. The union is an organization of inmates associated together for the purpose of working for prison reform.

2. Although permitting membership, the defendants oppose the solicitation of other

inmates to join and have made solicitation an infraction of its general disciplinary rules.

3. Not only is personal solicitation by inmate to inmate forbidden but so also is solicitation by correspondence or by newsletter or magazine. Indeed, solicitation by anyone by any means is prohibited.

4. Some newsletters addressed to certain inmates have been returned as nondeliverable. Because of the apprehension that such publications may contain articles slanted to encourage membership the defendants enforce their general rule forbidding the receipt of bulk mail. They will not permit an inmate to receive a bundle to be redistributed by him to other inmates.

5. Union meetings are forbidden. Employees of the Department of Correction are forbidden to negotiate with any person acting as a representative of any union, and no outsider will be admitted into a prison unit for the purpose of soliciting union membership.

6. Disparate treatment is accorded other organizations. Bundles of newsletters are allowed to be received from the Junior Chamber of Commerce, and redistribution to individual inmates is permitted.

7. Inmate members of the JC's are allowed to hold meetings in the prison units, and those meetings may be attended by outside speakers, outside JC members and friends from free society. The same is true of Alcoholics Anonymous, and in one institution a troop of Boy Scouts of America has been permitted to operate. Prisoners are permitted to assemble for religious services.

8. Due sometimes to mistake, sometimes to gaps in the formulation of policy and its execution, and especially due to the

very nature of this lawsuit, there have been a number of recent incidents amounting to a denial of the sixth amendment right of a prisoner to legal representation. Most of the incidents have involved the utilization of paralegals and the suspicion of lower echelon prison administrators that the paralegals were engaged in soliciting membership rather than in the implementation of this lawsuit or other court proceedings. At no time have the defendants themselves countenanced the denial of legal representation, and it is established policy that the use of paralegals is permitted.[1].

The Court further determined that "There is not one scintilla of evidence to suggest that the Union has been utilized to disrupt the operation of the penal institutions."[2]. Thus it was held that "In a system that permits membership in a union, we are unable to perceive any substantial governmental interest in supressing expression on the subject-whether for or against."[3].

A Judgment issued pursuant to the Memorandum Decision was entered on April 12, 1976 and the defendants gave Notice of Appeal in apt time. On April 16, defendants moved the District Court for a Stay which was denied April 20, 1976. A Motion for Stay directed to this Court was denied by the Honorable Chief Justice Warren E. Burger on April 27, 1976.

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1. Memorandum Decision, J.S. pp.23-25.
2. Ibid. p.28.
3. Ibid. p.27.

ARGUMENT

We believe that the District Court did not err in holding that the Prisoners' Union shall be accorded the privilege of bulk mailing...(and) the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations and to the extent and only to the extent, that other meetings of prisoners are permitted.[4].

I

THE QUESTIONS ON WHICH THE DECISION OF THE DISTRICT COURT ARE BASED ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

a) Appellants claim that the questions presented in this case are substantial because the decision of the District Court is contrary to the decision of another District Court in Paka v. Manson, 387 F.Supp. III (D. Conn. 1974). However, the decision of the Three-Judge Court in this matter is consistent with yet a third District Court Decision, National Prisoners' Reform Association v. Sharkey, 347 F.Supp. 1234 (DRI 1972). More importantly, the decision in the present case is consistent with the related Supreme Court cases of Pell v. Procunier, 417 U.S. 817 (1974) and Procunier v. Martinez, 416 U.S. 396 (1974). In fact, these decisions serve as the guiding light by which the District Court sees to find the facts and make their decision. So long as the decision of the lower court is in accord with prevailing Supreme Court law,

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4. Memorandum Decision, J.S. p.32.

the argument that there is a contrary decision in another district does not make for a substantial question. Moreover, a mere reading of the conflicting district court opinion shows that the cases are clearly distinguishable on their facts.

b) Appellants in their jurisdictional statement reprint their own affidavits which articulate their fears with regard to the inmate union and explain why they have permitted other organizations to meet. In addition to these affidavits, the Court considered the depositions of prison administrators Paul Keve, former Commissioner of Corrections for Minnesota and presently Director of Adult Correction for the State of Delaware and James W. Mullen, Warden of the Adult Correctional Institution for the State of Rhode Island who testified with regard to the incident related in the testimony cited in the Jurisdictional Statement as follows:

Q: In this incident, that you were telling about, on cross-examination, when the so-called Youth Commission was put out of business by a group of older prisoners, the older prisoners, who were, I believe, you say are now charged with assault, the ones who were responsible for this?

A: Yes, sir.

Q: Were any of them directors or officers of the Reform Association?

A: No, sir.

Q: Were you able to specifically identify the Reform Association with this movement to stamp out the Youth Commission in any way?

A: The people that did it all live together in one -- in the same tier, where, say, the President and Vice President live, and which is called GH&I Block.

Q: Beyond that, was there any connection?

A: No.[5].

The District Court also considered numerous affidavits including that of Fred Morrison, Jr., Executive Director of the North Carolina Inmate Grievance Commission and a member of the Legislative Commission on Sentencing, Criminal Punishment, and Rehabilitation, who stated in an affidavit filed in this case:

> I have read the Constitution and By-laws of the North Carolina Prisoners' Labor Union, Inc. and on Christmas Day, 1974, I met personally with several inmate organizers and officers of the Prisoners' Union (NCPLU) to discuss with them the philosophy and plans of the Union. On this basis, it is my considered opinion that the North Carolina Prisoners' Labor Union, Inc. does not pose a danger to the North Carolina Department of Correction or other prison programs, nor do I believe that the Prisoners' Union poses any threat to the jurisdiction or operation of the Inmate Grievance Commission.[6].

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5. Deposition of James W. Mullen, pp.60-61.
6. Jurisdictional Statement, p.26.

With regard to the rehabilitative or other value of the inmate union, the Court concluded:

> On conflicting expert opinion evidence we are left with no firm conviction that an association of inmates is necessarily good or bad, and we decline to make the characterization. It is not necessary that we do so in order to decide the narrow issues remaining in the case.[7].

II

THE APPEAL IS NOT SUFFICIENTLY IMPORTANT TO JUSTIFY PLENARY TREATMENT BY THIS COURT.

It is important to note that the decision of the lower court is narrowly drawn to the particular facts of this case. Appellants concerns for security, order and rehabilitation are provided for and protected by the District Court.

> In a system that permits membership in a union, we are unable to perceive any substantial governmental interest in suppressing expression on the subject--whether for or against. To permit an inmate to join a union and forbid his inviting others to join borders on the irrational.
>
> The substantial intersts of the state in its penal system are the maintenance

7. Memorandum Opinion J.S., p.26.

of "security, order and rehabilitation" Procunier v. Martinez, 416 U.S. 396, 413 (1974). "(T)he limitation of first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interst involved." Id. We are unable to perceive why it is necessary or essential to security and order in the prisons to forbid solicitation of membership in a union permitted by the authorities. This is not a case of riot. THERE IS NOT ONE SCINTILLA OF EVIDENCE TO SUGGEST THAT THE UNION HAS BEEN UTILIZED TO DISRUPT THE OPERATION OF THE PENAL INSTITUTION.

Nor is there any evidence tending to show that the inmates intend to operate it to hamper and interfere with the proper interests of government. Defendants' apprehension of misuse is not shared by other prison administrators of equal expertise and experience. Although the Union is said to have been active for many months and to number some 2,000 members, the record is bare of any suggestion of concerted activity. If the day should ever come that inmates threaten concerted action to force compliance with their demands and to disrupt prison discipline, the Secretary and the Commissioner are fully empowered to not only stop further solicitation of membership but to put down the Union and its adherents to whatever extent may be necessary to restore and protect security and order.[8].

8. Memorandum Opinion J.S. pp.27-28. (Emphasis Added)

The Court enjoined Appellants from punishing inmates for soliciting others to join the Appellee organization, from interferring with letters and publications concerning the organization, and requiring the Appellants to allow the inmate union to meet under the same restrictions and standards applied to other inmate organizations. The Court pointed out repeatedly that Appellants could disband the Appellee organization if the organization ever threatened concerted action.

Contrary to Appellants assertion that the District Court has discounted the fears and concerns of Corrections administrators, the Court carefully weighed concerns for security and order with the constitutional claims of the inmates and issued a decision which reflects that balance.

CONCLUSION

We acknowledge that problems of prison management are complex and difficult. Overcrowding, rehabilitation and security are among the many concerns. The future of legal and administrative developments is uncertain. Notwithstanding the concern of all parties over these issues, they are not presented to the Court in this case. The Appellants have already issued new reguations to cover meetings of the inmates and the mail has been delivered. The prison administrators have retained their control over the system as the District Court provided.

Respectfully submitted,

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